

## UNITED STATES DISTRICT COURT

~~WESTERN~~ DISTRICT OF NEW YORK

Southern

FORM TO BE USED IN FILING A COMPLAINT  
 UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983  
 (Prisoner Complaint Form)

15CV1887

1. CAPTION OF ACTION

**A. Full Name And Prisoner Number of Plaintiff:** NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

Donald Kelly # 13A2214

-VS-

**B. Full Name(s) of Defendant(s)** NOTE: Pursuant to Fed.R.Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. CO Alexis

2. CO Williams

3. New York City Department of Corrections

4.

5.

6.

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

**PLAINTIFF'S INFORMATION** NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_

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2015-03-10

Name and Prisoner Number of Plaintiff: \_\_\_\_\_

Present Place of Confinement & Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DEFENDANT'S INFORMATION NOTE:** To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: CO Alexis

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or ☒ Official Capacity

Address of Defendant: 09-09 Hazen St East Elmhurst NY 11370  
7-3 am shift

Name of Defendant: CO Williams

(If applicable) Official Position of Defendant: Correctional Officer

(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or ☒ Official Capacity

Address of Defendant: 09-09 Hazen St East Elmhurst NY 11370  
7am-3pm shift

Name of Defendant: New York City Department of Corrections

(If applicable) Official Position of Defendant: \_\_\_\_\_

(If applicable) Defendant is Sued in \_\_\_\_\_ Individual and/or ☒ Official Capacity

Address of Defendant: 75-20 Astoria Blvd East Elmhurst NY 11370

#### **4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT**

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action? Yes \_\_\_\_\_ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_.

Defendant(s): \_\_\_\_\_.

2. Court (if federal court, name the district; if state court, name the county): \_\_\_\_\_.

3. Docket or Index Number: \_\_\_\_\_.

4. Name of Judge to whom case was assigned: \_\_\_\_\_.

5. The approximate date the action was filed: \_\_\_\_\_.

6. What was the disposition of the case?

• Is it still pending? Yes \_\_\_\_\_ No \_\_\_\_\_

• If not, give the approximate date it was resolved. \_\_\_\_\_.

• Disposition (check the boxes which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

☐ By court for failure to exhaust administrative remedies;

☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

☐ plaintiff

☐ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes \_\_\_\_\_ No ☒

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): \_\_\_\_\_.

Defendant(s): \_\_\_\_\_.

2. District Court: \_\_\_\_\_.
  3. Docket Number: \_\_\_\_\_.
  4. Name of District or Magistrate Judge to whom case was assigned: \_\_\_\_\_.
  5. The approximate date the action was filed: \_\_\_\_\_.
  6. What was the disposition of the case?
    - Is it still pending? Yes \_\_\_\_\_ No \_\_\_\_\_
      - If not, give the approximate date it was resolved. \_\_\_\_\_.
    - Disposition (check the boxes which apply):
      - ☐ Dismissed (check the box which indicates why it was dismissed):
        - ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
        - ☐ By court for failure to exhaust administrative remedies;
        - ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
        - ☐ By court due to your voluntary withdrawal of claim;
      - ☐ Judgment upon motion or after trial entered for
        - ☐ plaintiff
        - ☐ defendant.
- 

## **5. STATEMENT OF CLAIM**

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- |                    |                        |                               |
|--------------------|------------------------|-------------------------------|
| • Religion         | • Access to the Courts | • Search & Seizure            |
| • Free Speech      | • False Arrest         | • Malicious Prosecution       |
| • Due Process      | • Excessive Force      | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect   | • Right to Counsel            |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims.

**Fed.R.Civ.P. 8(a)** states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial,

allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).

Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

**A. FIRST CLAIM:** On (date of the incident) ON or about April 12<sup>th</sup>, 2013,  
defendant (give the name and position held of each defendant involved in this incident) CO  
Alexis and CO Williams both correctional officers of New York city  
department of corrections.

did the following to me (briefly state what each defendant named above did): ON or about  
April 12, 2013 I was being escorted from seeing the counselor in the mail box back to  
my cell, cell 30 which was flooded. Upon my return I asked CO Williams and CO Alexis and  
I got a different cell. I asked to speak with a captain that's when CO Williams pushed me  
in my cell face first with handcuffs still on. I fell on my face in a puddle of water then  
CO Alexis brutally assaulted me with multiple punches to my face and temple while CO Williams  
kept her knee in my back. The force utilized by the defendants was reckless, willful and utterly disregarded  
the rights and safety of plaintiff (Donald Kelly) This conduct was performed deliberately with oppression  
and with such gross negligence, so as to indicate a wanton disregard for the rights of  
plaintiff. I was taken to East Elmhurst Hospital for my injuries, I was given a cat scan plus.

The constitutional basis for this claim under 42 U.S.C. § 1983 is: see attachment →

EXCESSIVE FORCE INJURIES

The relief I am seeking for this claim is (briefly state the relief sought): 2.5 million in compensatory  
damages, 100,000 in punitive damages and attorney fees/experts fees pursuant 42 USC 1988. (Appoint and

### **Exhaustion of Administrative Remedies**

attorney for  
the case.)

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison er confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim: Yes        No ✓

If your answer is yes, state the result: \_\_\_\_\_.

Did you appeal that decision: Yes \_\_\_\_\_ No ☒ \_\_\_\_\_

If your answer is yes, state the result: \_\_\_\_\_.

*Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.*

If your answer is no, state why you did not: \_\_\_\_\_

\_\_\_\_\_

**B. SECOND CLAIM:** On (date of the incident) \_\_\_\_\_,

defendant (give the name and position held of each defendant involved in this incident) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

did the following to me (briefly state what each defendant named above did): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The constitutional basis for this claim under 42 U.S.C. § 1983 is: \_\_\_\_\_

\_\_\_\_\_

The relief I am seeking for this claim is (briefly state the relief sought): \_\_\_\_\_

\_\_\_\_\_

**Exhaustion of Administrative Remedies**

According to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Did you grieve and/or appeal this claim: Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is yes, state the result: \_\_\_\_\_

Did you appeal that decision: Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer is yes, state the result: \_\_\_\_\_

*Attach any documents which indicate that you have exhausted your administrative remedies regarding this claim.*

If your answer is no, state why you did not: \_\_\_\_\_

**If you have additional claims, use the above format to set them out on additional sheets of paper.**

**6. RELIEF SOUGHT**

*Summarize the relief requested by you in each statement of claim above.*

2.5 million in compensatory damages, 100,000 in punitive damages and  
attorney fees / experts fees pursuant 42 USC 1988.  
(Appoint attorney for the case)

Do you want a jury trial? Yes ☒ No \_\_\_\_\_

**I declare under penalty of perjury that the foregoing is true and correct.**

Executed on \_\_\_\_\_  
(date)

**NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.**

\_\_\_\_\_  
\_\_\_\_\_  
Donald Kelly  
Signature(s) of Plaintiff(s)

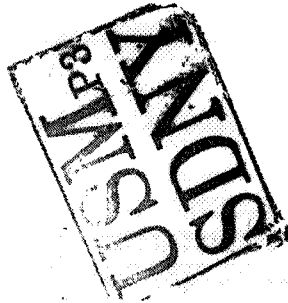
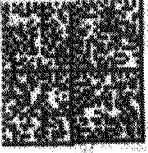
(Part of statement claim #)

Numerous pain medications. (Pictures were taken) When prison officials maliciously and sadistically used force to harm contemporary standards of decency are always violated. NYC health officials verified 1257 injuries resulted in use of force from April 2012 to April 2013. ~~It~~ classified 304 of those injuries as serious, meaning there were fractures or other injuries that required more than first aid treatment.

Donald Kelly #13A7214  
Collins Correctional Facility  
P.O. Box 340  
Collins, New York 14034-0340

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FACILITY

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